

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FREDERICK B ARNOLD

Plaintiff

Vs,

FULTON FRIEDMAN & GULLACE LLP

Defendant

Case no. 1:11-CV-0397 (LEK/RFT)

COMPLAINT

Jury Trial Demanded

Albany County }
New York State } ss:

Frederick B Arnold , the Plaintiff in this action, by his attorney, complains of the defendant by alleging and showing that:

NATURE OF ACTION

1. This is an action to enforce the Fair Debt Collection Practice Act (FDCPA)
15 USC §1692 *et seq.*,

JURIDICTION AND VENUE

2. This Court has federal question jurisdiction under 15 USC §1692k (d) and 28 USC §1331. Declaratory relief is available per 28 USC §§ 2201 and 2202.

3. Venue is proper in this district per 28 USC §1331 (b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district because plaintiff lives in this district, defendant conducts business in this district and the injury occurred in this district.

PARTIES

4. At all relevant times:

- a. I am and was a resident of Averill Park in the Town of Sand Lake, Rensselaer County, New York State, within this district,
- b. I am a "consumer" as that term is defined in the FDCPA, in that I am a natural person who allegedly owes a debt to another.

5. Upon information and belief, at all relevant time, the defendant Fulton Friedman & Gullace LLP ("FFG") :

- a. is a New York limited liability partnership with a principal place of business at Rochester, New York
- b. Is a "debt collector" as that term is defined in the FDCPA;

- c. Is in the business of collecting consumer debt for others by use of the mail, telephone, and the courts of New York and other means of interstate commerce.
- d. transacts business within this district.

FACTUAL ALLEGATIONS

- 6. On or about 10/25/10 FFG sued me for Wells Fargo Bank NA in the Albany City Court . A copy of the summons and complaint is attached as Exhibit A,
- 7. The subject of the lawsuit was an alleged credit card debt which (whether I owe it or not) is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, or services are primarily for personal, family, or household purposes, hence a "debt" as that term is defined by the FDCPA
- 8. The Albany City Court derives its authority from Article VI, Section 17 of the New York State Constitution, which we ask the Court to take notice of.

9. According to the Constitution, city courts outside the city of New York have only those powers and jurisdiction the State Legislature gives to it. These powers and jurisdiction are found in the New York State Uniform City Court Act (UCCA). As such, the Albany City Court is a court of limited jurisdiction.

a. Geography is one of those limitations. UCCA §213 states in pertinent part:

(a) In an action described in §202,¹ either a plaintiff or a defendant must:

1. *be a resident of the city or of a town contiguous to such city, provided that such town is*
(i) within the same county, and
(ii) contiguous to the city by land, and
(iii) not within either Nassau or Westchester counties; or

2. *have a regular employment within the city; or*

3. *have a place for the regular transaction of business within the city.*

(b) A corporation, association or partnership shall, for the purposes of this section, be deemed a resident of the city if it has an office or agency or regularly transacts business in the city...

(d) *The requirements of this section shall not be deemed jurisdictional; they shall be deemed waived by the plaintiff upon his commencing an action in the court, and they shall be*

¹ UCCA 202 describes an action for the recovery of money.

deemed waived by the defendant unless he raises the objection by motion or in his responsive pleading as prescribed in §1002 of this act. Notwithstanding waiver by the parties, the court may, on its own initiative at any time, dismiss an action which does not satisfy the requirements of this section. Any dismissal under this section shall entitle the parties to the benefit of CPLR S 205, relating to an extension of time to commence a new action.²

- b. In other words, to invoke the jurisdiction of the Albany City Court, one of the parties must live or work within the City of Albany, or live in an Albany County town that is contiguous by land to the City, i.e. Bethlehem, Colonie or Guilderland.
10. In paragraph 2 of the complaint FFG alleged I lived at 10B Airline Drive, which is in the Town of Colonie.
11. In fact, I work at 10B Airline Dr.
12. In fact, I live on Mountain View Drive in the Town of Sand Lake, which is in Rensselaer County.
13. FFG knew or had reason to know where I lived, as opposed to where I worked.
14. FFG did not allege that I signed a contract or other document evidencing a debt to Wells Fargo in the City of Albany. In fact, I did not.

² Emphasis added. See Ex C for full text

15. I have not/do not live or work or had a place for business in the City of Albany, New York; I live Averill Park, which in the Town of Sand Lake, Rensselaer County and work in the Town of Colonie.
16. FFG, in the complaint, never alleged that Wells Fargo Bank NA was a resident of Albany or had a place of business in Albany, as required by the UCCA §213. In fact, Wells Fargo Bank NA is a South Dakota-based bank.
17. Indeed, the complaint FFG filed did not allege any facts to support the City Court's jurisdiction under UCCA § 213
18. FFG could have sued me in the Supreme Court for Rensselaer County, a court of general jurisdiction, but it did not.
19. Indeed, New York Civil Practice Law and Rules section 503(f), which we ask the court to take notice of, requires plaintiffs in consumer credit cases to sue the defendant in the county in which he lives.
20. I was served at my workplace at 10B Airline Drive, in the Town of Colonie. A true copy of the affidavit of service is attached as Exhibit B.

21. As a result, I had to hire an attorney to defend me and bring a motion to dismiss the complaint on jurisdictional grounds, which was ultimately granted.

CLAIM 1

(Violation of the Fair Debt Collection Practices Act 15 USC 1692i- improper venue)

22. I reallege and reiterate the allegations of the preceding paragraphs;

23. FFG actions in suing me in a judicial district (i.e., the Albany City Court) where I do not live nor where the alleged credit card contract sued upon was signed, violates 15 USC §1692i and 15 USC §1692f

COUNT 2

(Violation of the Fair Debt Collection Practices Act 15 USC 1692f

Unfair/unconscionable collection practice)

24. I reallege and reiterate the allegations of the preceding paragraphs;

25. FFG's acts of:

- a. suing me in a judicial district (i.e., the Albany City Court) which did not have jurisdiction over me or the subject matter when it knew or should have known I lived in another county, and

b. suing me in Albany County where I work instead of Rensselaer County where I live as required by New York State CPLR §503, was deceptive, improper and unfair, violating 15 USC §1692e(5), 15 USC §1692f and 15 USC §1692i

26. FFG's actions as alleged in the above Counts were frequent, intentional, and persistent.
27. As a result I have been damaged

JURY DEMAND

I respectfully request a trial by jury of all issues.

WHEREFORE, I ask the Court for judgment:

- a. declaring the actions of the defendants in violation of the FDCPA ;
- b. awarding me actual damages ;
- c. awarding me statutory damages per 15 USC §1692k;
- d. awarding me costs and disbursements of this action, and reasonable attorney's fees (per 15 USC § 1692k), and
- e. such other, further and different relief as the Court finds proper here.

DATED: 3/31/11

S/ Anthony J Pietrafesa
ANTHONY J PIETRAFESA ESQ. (102368)
Attorney for the Plaintiff
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VERIFICATION

New York State }
Albany County } ss:

Frederick B Arnold , being duly sworn, deposes and says: I the plaintiff in this action, I have read the complaint, and the factual allegations contained in the complaint are true to my personal knowledge except for those based on my information and belief, and as to those I believe them to be true.

s/ Frederick B Arnold

Sworn to and Subscribed
Before me on 3/31/11

s/ Anthony J Pietrafesa

Anthony J. Pietrafesa
Notary Public Albany County
02PI6155974
My Commission exp. 11/20/2014

